IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.218 OF 2006

Rajaram Stock Broking Co.Pvt.Ltd. ...Petitioners

v/s

Panacea Management and Marketing Services Pvt.Ltd. ...Respondents

Ms Sindha Sreedharan for Petitioners.

Mr Pradip Sancheti i/b M/s Mohona Nair Associates for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 7TH NOVEMBER 2006.

P.C. :-

1. This is a petition filed under section 34 of the Arbitration and Conciliation Act 1996,. The facts that are relevant and material are that a Company by name Emar Financial Services Pvt.Ltd., in the month of May 2003 purchased 8,000 shares of Great Eastern Shipping Co. Ltd. from the petitioners. According to the petitioners, out of those 8,000 shares, 5,900 were delivered, 2,100 shares remained in balance. Those shares were not delivered by the petitioners and were withheld because the petitioners had to recover an amount of Rs.2,22,749.23 from one Ajit Shetty, who was Director of Emar Financial Services Pvt.Ltd. A reference under the bye-laws of the Bombay Stock Exchange was made by the respondent - M/s Panacea Management and Marketing Services Pvt.Ltd. demanding delivery of 2,100 shares of Great Eastern Shipping Co. Ltd. In that arbitration, the defence of the petitioners was that they have an agreement with Emar Financial Services Pvt.Ltd., they have no contract with the respondent - M/s Panacea Management and Marketing Services Pvt.Ltd. The other defence raised by them was that Mr Ajit Shetty was the Director of Emar Financial Services Pvt.Ltd., he was dealing with the petitioners in the name of the Company - Emar Financial Services

Pvt.Ltd. as also in his own name and that in the transactions which were carried out by Mr Ajit Shetty in his own name, the aforesaid amount was adjusted by the petitioners and therefore, the petitioners are not liable to deliver the shares to the Company. The original Arbitral Tribunal made an award dated 13th October 2005 directing the petitioners to pay certain amount to the respondents and award for delivery of the shares was not made, instead the value of the shares was taken into consideration and the amount payable by Mr Ajit Shetty to the petitioners was deducted from that amount. This award was challenged before the Appellate Tribunal by the respondents. It appears that the petitioners had also filed cross appeal. The appellate Tribunal set aside the award made by the original Arbitral Tribunal and has directed the petitioners to deliver 2,100 shares of Great Eastern Shipping Co.Ltd. to the respondents. It is this award made by the Appellate Tribunal which is under challenge.

2. The learned counsel appearing for petitioners submits that the shares were purchased in the name of Emar Financial Services Pvt.Ltd. Emar Financial Services Pvt.Ltd. was the original name of the respondent Company, that name was changed and new name was adopted in the year 1998. There was no client-broker agreement between the petitioners and M/s

Panacea Management and Marketing Services Pvt.Ltd. and therefore, no award could have been made by the Arbitral Tribunal. There is some controversy whether this point was actually argued before the Appellate Tribunal or not, but in my opinion, in view of the admitted position that Emar Financial Services Pvt.Ltd. was the previous name of the respondent Company, no fault can be found with the award made by the appellate Tribunal because even according to the petitioners, 2,100 shares were liable to be delivered by them to Emar Financial Services Pvt.Ltd. In my opinion, however, the Appellate Tribunal, while issuing direction to deliver shares to the respondents, an indemnity should have been taken by the Appellate Tribunal. The respondents are prepared to file an undertaking in this Court so that the petitioners can be indemnified in that regard. So far as the liability of the petitioners to deliver 2,100 shares to Emar Financial Services Pvt.Ltd. is concerned, the only defence that has been offered by the petitioners is that certain amounts were recoverable by the petitioners from Mr Ajit Shetty, who was a Director of the respondent Company. Really speaking, as the arbitration proceedings were between the petitioners and the respondents and Mr Ajit Shetty was not a party to the arbitral proceedings, this claim made on behalf of the petitioners against Mr Ajit Shetty could not have been considered by the Arbitral Tribunal. Therefore,

rightly the Appellate Tribunal has set aside the award made by the original Arbitral Tribunal. In my opinion, if the petitioners had any claim against Mr Ajit Shetty, the remedy of the petitioners was to lodge a claim against him, the petitioners were not at all justified in withholding delivery of the shares to the Company because it has the claim against one of the Directors of the Company. In my opinion, considering the defence raised by the petitioners, no fault can be found with the award made by the Appellate Tribunal. The petition has thus no substance and it is disposed off. However, it is directed that within two weeks from today, the respondents shall file an undertaking in this Court undertaking that in the event pursuant to any order made by any competent Court or authority if the petitioners are required to deliver 2,100 shares of Greater Eastern Shipping Co.Pvt. to Emar Financial Services Pvt.Ltd. or its nominee, the respondents will deliver the share on behalf of the petitioners. Petition is disposed off with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.